

**Minutes of the meeting of the
Commonwealth Competition Council
held Wednesday, October 8, 2003, 10 a.m.
General Assembly Building, Senate Room B, First Floor
Richmond**

Members present:

Senator Emmett W. Hanger, Jr., Chairman
Sandra D. Bowen
Richard D. Brown
Beverly B. Davis
Marcus D. Jones
Delegate Allen L. Louderback
Edgardo Marquez
Marian M. Pegram
Delegate Thomas D. Rust
Senator John C. Watkins
Sara Redding Wilson
David M. Zobel

Members absent:

Robert A. Archer
Roy Page

One vacancy

Notice of the meeting appeared in the Commonwealth Calendar on the Internet and individual notices were sent to those asking to be notified of all Commonwealth Competition Council meetings.

Senator Hanger presided over the meeting and extended a welcome to all present. Each Council member introduced himself and the Chairman announced the two new members of the Council who were recently appointed by Governor Warner:

Marcus D. Jones, of Henrico County, Deputy Secretary of Finance, to a three-year term ending June 30, 2006, succeeding Earl H. McClenney, Jr. Mr. Jones fills one of the four executive branch employee seats on the Council.

Marian M. Pegram, of Alexandria, Senior Manager/Project Manager with Thompson, Cobb, Bazilio & Associates, to a three-year term ending June 30, 2006, succeeding Michael N. Pocalyco. Ms. Pegram fills one of the five private sector seats on the Council.

The Chairman also announced the reappointment of Sandra D. Bowen, of Henrico, Secretary of Administration, to a three-year term ending June 30, 2006. Secretary Bowen fills one of the four executive branch employee seats on the Council.

Mr. Jones and Ms. Pegram advised that they had taken the oath of office.

The Chairman said he looked forward to today's informational work session. The Council has one vacancy, a member of the Small Business Commission to be appointed by the Senate Privileges and Elections Committee. This vacancy was created when Bernice E. Travers was not reappointed to the Small Business Commission.

Minutes

The minutes of the April 29, 2003, meeting of the Council were approved and will be filed with the permanent records of the Council. As a reminder, draft minutes appear on the Internet as soon as possible but not later than ten working days following the meeting in accordance with § 2.2-3707.1 of the *Code of Virginia*. Final approved minutes are posted within three working days of final approval. Commonwealth Competition Council minutes are being posted in accordance with the above to the Council web page, <http://www.egovcompetition.com>.

Virginia Freedom of Information Act (FOIA)

Ms. Maria J.K. Everett, Executive Director of the Virginia Freedom of Information Advisory Council, was welcomed to the meeting. She reminded the Council how FOIA works in the context of records and meetings. She said the law is a balance between the right of access and the need for government to function. Under Virginia law, the presumption is that all documents in the possession of public officials and all meetings of state and local public bodies are open to citizens of the Commonwealth. She said there are exceptions and these exceptions can lead to good faith disagreements between citizens or media and public officials. Her office, the Virginia Freedom of Information Advisory Council, helps resolve disputes over FOI issues. This advisory council answers questions from private citizens, state and local public officials and the media about access to public records and meetings. The materials she distributed to the members are attached and made a part of the minutes. The Council members were also provided with an advanced copy of the FOIA in their meeting folder. Several key topics were explained:

Closed meetings - Because the law affords every opportunity for citizens to witness the operation of their government, she cautioned members on executive sessions or closed meetings. There is a specific procedure governing this instance and only the matters announced to be discussed in closed session can be taken up in that session. She discussed that the motion to go into closed session must include the *Code of Virginia* citation and that no action during closed session is official. If the closed session is to seek legal advice, the lawyer must be present in the meeting. When the group returns to open session, a motion must be made to cover the action discussed in the closed session.

Three or more members of a body - She said that whenever three or more members of a body are present and discuss any official business, it is considered a public meeting and minutes have to be taken. This extends to subcommittees when advance notice has to be given of the meeting. The example she cited was nothing in the statute prevents three members of the Council attending the same gathering but the caution was to avoid discussion of CCC business.

Voting on all matters of a public body is by a show of hands or voice vote. No written ballot is permitted.

Violations to the FOIA are outlined in the law and she advised the members when legal fees had to be paid for violations.

Email is a gray area of law. However, email records are considered public records. She cautioned that email should be used judiciously. If email goes to three or more members, it is considered a public meeting.

Electronic meetings are permitted, but again it is extremely important to follow the law in this case and in all cases involving public meetings and records.

The members queried Ms. Everett on several key points. She reiterated that her office was available as a resource to the Council at any time.

Executive Director

Each member of the Council had been advised of the resignation and retirement of the Council's first and only executive director. Mr. Phil Bomersheim had decided to seek the Virginia Senate seat being vacated in the Second District in the Newport News area. The chairman advised the Council of the difficult situation involving telephone calls and personal visits made on state time. When this was brought to the chairman's attention, they decided jointly that he would retire immediately. The Auditor of Public Accounts was brought in to make an examination of the records. His report will be finalized within the next week or so and will be made public.

Each member had also been notified of the chairman's interim appointment of Mrs. Peggy R. Robertson as Acting Executive Director, subject to confirmation by the Council at its next meeting.

On motion of Mrs. Wilson, seconded by Delegate Louderback, the Council unanimously accepted the resignation of Phil Bomersheim and ratified the chairman's appointment of Peggy Robertson as Acting Executive Director. A decision on retroactive acting pay was deferred until the January meeting when the state of the Council's budget will be known. The state's human resource rules provide for up to 15 percent increase in salary and it can be applied at any specific time.

Innovative Cost Saving Initiative

Change of color of Virginia Department of Transportation vehicles

Mr. Erle W. Potter, Assistant Director for Equipment Management, and Mr. Richard G. Bonistalli, Equipment Planning and Performance Manager, both with the Asset Management Division of the Virginia Department of Transportation (VDOT), spoke with the Council on the efficiency in government initiative of changing the color of VDOT vehicles. The power point presentation is attached and made a part of the minutes.

VDOT is adopting the standardized equipment colors. The evolution of the colors was reported as:

Timeframe	VDOT equipment color	\$ per gallon	Est. # gallons purchased/year	Cost per year
1930s-1950s	"Military" gray			
early 1960s	VDOT orange	\$149.00*	400	\$59,600
2003	White	\$134.00*	400	<u>\$53,600</u>
Savings per year on purchase of white paint				\$ 6,000

*does not include labor

Mr. Potter stated that Delegate Louderback had made the suggestion to change the vehicle color to white.

Other department of transportations using white trucks and factory standard colors are Louisiana, Mississippi, West Virginia, Tennessee, Arkansas, Kentucky, Texas, Ohio and California.

The accrued savings for 2003 to date totaled 608 various classes of vehicles with a savings of \$160,426. Mr. Potter also estimated that there was a nine percent savings per gallon in the white vs. orange paint.

It was further reported and concurred in by Mr. Marquis J. Bolton, Director of the Bureau of Supply and Asset Management of the Department of General Services, that white trucks and agricultural colors bring higher resale value. The example cited was a recent equipment sale conducted by the Bureau of Supply and Asset Management. A 1994 white 4x4 pickup with 205,000 miles sold for \$5,700. A 1994 orange 4x4 pickup with 207,000 sold for \$4,700.

The Council was also told that it will take 20 years or more to entirely change out the fleet to white. Mr. Potter indicated that there were no plans on a campaign for educating the public. When asked if the \$160,000 savings this year could be expected in the future, Delegate Louderback was told that VDOT was not buying as much equipment as it needs due to decreased funding.

**Two outsourcing issues:
Use of Virginia Distribution Center and
Prison commissary process/outcomes
Department of Corrections**

Ms. Nancy H. Scott, Deputy Director/Administration for the Department of Corrections, spoke with the Council first on the department's use of the Virginia Distribution Center. The material distributed to the members and the public reflected the following statistics:

	DEPARTMENT OF CORRECTIONS 2002-2003 FISCAL YEAR COSTS			
	Raw Food	Raw Food %	Actual Food Supply (not paper products)	Actual Food Supply %
Private vendor	\$835,671	5%	\$312,714	30%
Virginia Distribution Center (VDC)	\$5,309,279	35%	\$544,343	51%
Department of Corrections (agribusiness: farming, meat and dairy processing)	<u>\$9,147,995</u>	<u>60%</u>	<u>\$197,460</u>	<u>19%</u>
Total	\$15,292,945	100%	\$1,054,517	100%

Ms. Scott told the Council that the Department of Corrections accounts for 56% of the Virginia Distribution Center sales, or \$5,300,000 annually. She reminded the Council that the main emphasis of the Department behind the 60% agribusiness activity was in keeping the inmates busy. Senator Watkins indicated that the dairy and agribusiness activities were among the best operations in the state. Ms. Scott said that the above costs were real costs and that inmate labor was not included. She also qualified the above numbers by indicating that the \$9,147,995 cost represents actual cost of food production or what it would have cost at wholesale market.

Delegate Louderback asked how much the department had spent in 2002 with the VDC, but Ms. Scott said she would have to provide that information.

Mrs. Robertson asked the status of the RFP issued by the department during the summer for the privatization of food services contracted through the Virginia Distribution Center. The bids were received in July and are currently under review by the department, with a tentative date of November 5, 2003, for completion of the review of the responses. When asked why the RFP was issued, Ms. Scott advised that the department, like all state agencies and institutions, is looking at any and all means to reduce its costs. The possibility of outsourcing its food purchases was one of those functions under review.

Prison commissary process/outcomes

The Department of Corrections was also asked to speak with the Council concerning the prison commissary, its processes and outcomes. Ms. Scott advised that the department award a contract to Keefe Commissary Supply of St. Louis, Missouri, effective July 1, 2002, for a one year term with four renewal options. Keefe's Virginia operation is in Chesapeake. Originally there were seven pilots in this outsourcing of the commissary supplies that included Coffeewood, Deep Meadow, Sussex II, Keen Mountain, Dinwiddie Field Unit, Chatham and Harrisonburg Men's Diversion. Two additional facilities have been added, Halifax Correctional Unit and Lunenburg Correctional Center. She indicated that to date all correctional facilities have been added to the contract and will be transitioned over to Keefe by December 2003, except for seven: Marion, Red Onion, Wallen's Ridge, Sussex I, James River, Dillwyn and Botetourt. These seven will continue their commissaries in-house as they reported they were satisfied with their current internal operation.

After completion of privatization of prison commissaries, the department will experience a reduction of 29 classified and wage commissary managers/commissary supervisors. Ms. Scott said that in most cases, all of the affected employees have been or will be offered an opportunity to work for Keefe. Those who elected not to work with the contractor were hired internally at the department. Savings will be generated from staff salaries and benefits as well as any other compensation. When asked about real savings, Ms. Scott said that the department was paying the salaries and benefits of the classified employees, but the wage positions were paid out of the commissary profits. Secretary Bowen asked if the department calculated the severance costs (Workforce Transition Act) when it ceased operation because those transferring may not be able to do so under the current budget situation. Ms. Scott said they were fortunate to be able to offer employment to those remaining in the state system. She projected that the 29 positions would result in a savings of \$800,000 this fiscal year and a little over \$1,000,000 in 2005.

Ms. Scott said that efficiencies have been generated through a standard pricing and product list. Heretofore there were numerous vendors and products. After a review of the pilots, the department reported a six percent increase in sales although there was a three percent increase in pricing. This is with a prison population of around 30,000. Delegate Louderback asked if the six percent increase in sales was based on an increased or flat prison population, for he was under the impression that the department was losing prisoners because of out-of-state prisoners being returned and the possibility of closing some prisons. Ms. Scott said she did not know the history of the prison population but would get the requested information.

Senator Hanger told the Council that concerns had been expressed to him by those businesses in the area that previously had been servicing the commissaries and the resulting loss of jobs through this action of the department in expanding the pilot to Keefe. He shared the concern of the businesses because it was displacing Virginia based businesses. Ms. Scott said that the department encouraged the contractor to use Virginia vendors.

Employee Suggestion Program

At the request of Mrs. Wilson, the report on centralized vs. decentralized Employee Suggestion Program was delayed until the January meeting.

Capitol Gift Shop

At the request of Mrs. Robertson, the report on the Capitol Gift Shop was delayed until the January meeting.

Authorities Study

Dr. Earl H. McClenney, Jr., was welcomed to the meeting. As a former member and Vice Chair of the Council, Dr. McClenney chaired the subcommittee looking into Authorities in Virginia. This study came about during the nonprofit study the Council did several years ago. Dr. McClenney reminded the Council that there were more than 617 authorities in Virginia. He said that little is known about these quasi-governmental entities who are allowed to create debt. He said that the General Assembly abolished the section of the *Code of Virginia* which required these authorities to report annually. He asked for the Council support to continue the study to its completion on a volunteer basis. He will assign several Virginia State University students as interns. On motion of Delegate Louderback, seconded by Mr. Marquez, the Council authorized the staff to work with Dr. McClenney in developing a report to the Council on Authorities in Virginia. The motion carried unanimously. Dr. McClenney will complete this work in time to report back to the Council at its January 2004 meeting. The Council expressed its appreciation to Dr. McClenney for his service to the Commonwealth through his most able work as a member of the Commonwealth Competition Council.

Commonwealth Competition Council funding

Mr. Brown led the Council in a discussion of the financial options for the Council. He advised that the budget of the Council changed as of July 1, 2003, when it was to be funded from savings generated by Council recommendations. The Appropriation Act states that no later than April 1 of each year the Auditor of Public Accounts is to certify to the Comptroller the total new savings realized by state agencies in the preceding fiscal year as a result of Commonwealth Competition Council recommendations. The Comptroller would then be authorized to transfer not more than 10 percent of these savings to a non-reverting special fund account for support of the Council's activities. At the last strategic planning session of the Council, it was agreed that the Department of Planning and Budget would play a role in this process through pre-certification of savings to the Auditor in order for the certification to begin.

Each member was provided with a copy of the Council's legislation in the *Code of Virginia* and a copy of the language in the current Appropriation Act.

He reminded the members that the issue arose when recommendations were identified and certified to the Auditor. For fiscal year 2002, it was verified that the \$2.4 million in savings from actions by the General Assembly was based on a recommendation of the Council on the food distribution system for prisons and mental health facilities. The savings generated by this recommendation were redirected to other priorities or funding needs prior to the Appropriation Act becoming effective. Thus there is no operational money.

A current pending funding possibility was savings from a telecommunications audit of state agencies and institutions. Mr. Brown reminded the Council of the staff work for this audit and the extensive amount of

time it took to bring a project like this to completion. A contract has been awarded for this audit by the Virginia Information Technologies Agency and it is open to all state agencies and institutions. He said that the Department of Planning and Budget had talked with VITA and that agency has agreed there would be savings, but probably not as much as the \$3 - \$4 million the Council staff had identified.

Currently the Council is funded from year-end balances and will be advanced funds from central accounts that will be repaid. This, he projected, would get the Council to the General Assembly and through spring. The question raised was how do the members want the Council funded. It was suggested that the Council begin thinking what change, if any, it wants to make in the language and to go on record in that regard. It was agreed that the Council will develop recommendations at its January meeting. It was also agreed that the real issue of current savings is the timing of being audited in the spring for the savings identified get appropriated within the budget process, resulting in no funds for the Council. There appears to be several different funding mechanisms and Mr. Brown will work with Senator Hanger to develop some items for consideration by the Council.

Election of Officers

Senator Hanger was unanimously reelected chair of the Commonwealth Competition Council for the current fiscal year. Mr. Archer was elected vice chair.

Staff report

Mrs. Robertson thanked the Council for confirming the Chairman's action designating her as Acting Executive Director. She indicated that a majority of time since August was spent on budget development for the 2004-2006 biennium, and working with the Virginia Information Technologies Agency through filing the Council's data on technology equipment, software, and information technology strategic planning.

Next meeting

The chairman announced the next meeting of the Council will be the first Wednesday in January, January 7, 2004, at 10 a.m. in Richmond. The location will be announced as soon as confirmed. In addition to the funding issue, the Council will hear recommendations from the Auditor of Public Accounts on internal controls for the Council's consideration.

There being no further business, the meeting adjourned.

Emmett W. Hanger, Jr.
Chairman